

**EXHIBIT E**

**Claim No. 387 (The Termite Control Claim)**



A 0 0 0 0 0 3 8 7 B

**WR Grace**

RUST000068

**Bankruptcy Form 10****Index Sheet**Claim Number: 00000387Receive Date: 08 / 06 / 2001**Multiple Claim Reference**

Claim Number \_\_\_\_\_

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MMPOC

Medical Monitoring Claim Form

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PDPOC

Property Damage

☐

NAPO

Non-Asbestos Claim Form

☐

Amended

Claim Number \_\_\_\_\_

☐

MMPOC

Medical Monitoring Claim Form

☐

PDPOC

Property Damage

☐

NAPO

Non-Asbestos Claim Form

☐

Amended

**Attorney Information**Firm Number: 155

Firm Name:

Attorney Number:

Attorney Name:

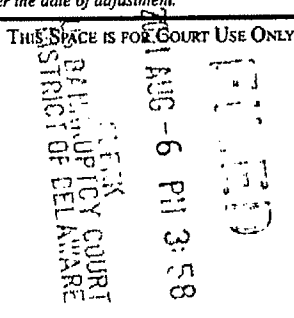
Zip Code:

Cover Letter Location Number:

Attachments Medical Monitoring	Attachments Property Damage	Non-Asbestos
<input type="checkbox"/> TBD	<input type="checkbox"/> TBD	<input checked="" type="checkbox"/> Other Attachments
<input type="checkbox"/> TBD	<input type="checkbox"/> TBD	
<input type="checkbox"/> TBD	<input type="checkbox"/> TBD	
<input type="checkbox"/> TBD	<input type="checkbox"/> TBD	
<input type="checkbox"/> TBD	<input type="checkbox"/> TBD	
	<input type="checkbox"/> Other Attachments	
<b>Other</b>	<input type="checkbox"/> Non-Standard Form	
	<input type="checkbox"/> Amended	
	<input type="checkbox"/> Post-Deadline Postmark Date	

FORM B10 (Official Form 10) (4/01)

ORIGINAL

UNITED STATES BANKRUPTCY COURT _____ DISTRICT OF <u>DELAWARE</u>		<b>PROOF OF CLAIM</b>
Name of Debtor <b>W. R. GRACE &amp; COMPANY</b>		Case Number <b>A-01-771</b> <b>01-01139 (JJF)</b>
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (The person or other entity to whom the debtor owes money or property): <b>HOME SAVING TERMITE CONTROL, INC</b>	<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.	
Name and address where notices should be sent: <b>PRINDLE, DECKER &amp; AMARO</b> <b>310 Golden Shore, 4th Floor</b> <b>Long Beach, California 90802</b>	Telephone number: _____  THIS SPACE IS FOR COURT USE ONLY	
Account or other number by which creditor identifies debtor:	Check here if this claim <input type="checkbox"/> replaces a previously filed claim, dated: _____ <input type="checkbox"/> amends	
<b>1. Basis for Claim</b> <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input type="checkbox"/> Taxes Indemnity Claim <input checked="" type="checkbox"/> Other _____		
<input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input type="checkbox"/> Wages, salaries, and compensation (fill out below) Your SS #: _____ Unpaid compensation for services performed from _____ to _____ (date) (date)		
2. Date debt was incurred:	3. If court judgment, date obtained:	
<b>4. Total Amount of Claim at Time Case Filed:</b> \$ <u>N/A</u> If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below. <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.		
<b>5. Secured Claim.</b> <input type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief Description of Collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____  Value of Collateral: \$ _____  Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ _____	<b>6. Unsecured Priority Claim.</b> <input type="checkbox"/> Check this box if you have an unsecured priority claim Amount entitled to priority \$ _____ Specify the priority of the claim: <input type="checkbox"/> Wages, salaries, or commissions (up to \$4,650)* earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Up to \$2,100* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6). <input type="checkbox"/> Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____). <small>*Amounts are subject to adjustment on 4/1/04 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</small>	
<b>7. Credits:</b> The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.  <b>8. Supporting Documents:</b> Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.  <b>9. Date-Stamped Copy:</b> To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.		THIS SPACE IS FOR COURT USE ONLY <div style="text-align: center;">  </div>
Date <b>7/25/01</b>	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any): <b>GARY E. YARDUMIAN, ESQ.</b>	
Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.		

WR Grace

BF 2.8.387

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Attorneys for Cross-Defendants, **HOME SAVING TERMITE CONTROL, INC.**  
and **W.F. MORRIS**

**UNITED STATES BANKRUPTCY COURT FOR DISTRICT OF DELAWARE**

IN RE W.R. GRACE & COMPANY,

Debtor,

TIG INSURANCE COMPANY, a California  
Corporation,

Plaintiff,

v.

GARY SMOLKER, an individual, and ALICE  
SMOLKER, an individual, and DOES 1-10,  
inclusive,

Defendant.

AND RELATED CROSS-ACTIONS

Chapter 11

Case No. 01-01139

**DOCUMENTS OFFERED IN SUPPORT  
OF PROOF OF CLAIM**

COMES NOW, Creditors, HOME SAVING TERMITE CONTROL, INC. and WAYNE MORRIS, hereby submit the following Memorandum of Points and Authorities and Declaration of Gary E. Yardumian in support of proof of claim.

## MEMORANDUM OF POINTS AND AUTHORITIES

### I.

#### STATEMENT OF REASONS IN SUPPORT OF CLAIM

There is currently pending before this Court a Petition for Relief under 11 U.S.C. §§ 1101, et seq., relating to the affairs of Debtor, W.R. GRACE & COMPANY (hereinafter "Debtor"). Said petition, entitled In Re W.R. Grace & Company bears the case number 01-01139. Debtor is a cross-defendant and alleged manufacturer of a product in a state strict products liability action entitled TIG INSURANCE v. GARY SMOLKER, et al., and related cross-actions, California Case No. BC 173952. Moving Parties, HOME SAVING TERMITE CONTROL, INC. and WAYNE MORRIS, are also cross-defendants to the same strict products liability action. However, Moving Parties only applied Debtor's product and never manufactured or supplied the product. Therefore, Moving Parties have a potential claim for indemnity against Debtor if a trier of fact finds Moving Parties liable under a strict products liability theory.

More specifically, the potential indemnity cross-complaint against Debtor arises out of an incident on October 15 and 16, 1996, in which HOME SAVING TERMITE CONTROL, INC. (hereinafter "Home Saving Inc."), a termite control company owned and operated by WAYNE MORRIS (hereinafter "Morris"), applied the product Syloid 244 to the condominium unit owned by GARY SMOLKER and ALICE SMOLKER (hereinafter "the Smolkers"). The Smolkers allege they have sustained personal injuries as a result of exposure to Syloid 244. Syloid 244 was manufactured and distributed by the Debtor, W.R. GRACE & COMPANY. On or about July 2, 1997, TIG INSURANCE COMPANY filed a declaratory relief action against the Smolkers seeking a declaration that TIG INSURANCE COMPANY is not responsible to pay any insurance proceeds to the Smolkers. Thereafter, in October of 1997, the Smolkers filed a cross-complaint against HOME SAVING TERMITE CONTROL, INC., WAYNE MORRIS, W.R. GRACE & COMPANY and numerous other parties alleging 31 causes of action, including but not limited to a strict products liability cause of action

1 against HOME SAVING TERMITE CONTROL, INC., WAYNE MORRIS, and W.R. GRACE &  
 2 COMPANY. This state court action, entitled TIG INSURANCE v. GARY SMOLKER, et al., and  
 3 related cross-actions, Case No. BC 173952, was filed in the Los Angeles Superior Court, Central  
 4 District.

5 The state court action referenced above is set to commence trial on June 11, 2001. Moving  
 6 Parties have the potential to file a cross-complaint against Debtor for indemnity to recover any monies  
 7 Moving Parties are forced to pay if a trier of fact finds the Smolkers sustained personal injuries as a  
 8 result of a defective product manufactured and supplied by Debtor, W.R. GRACE & COMPANY.  
 9 Moving Parties have yet to file the cross-complaint against Debtor because prior to the bankruptcy  
 10 petition, Moving Parties and Debtor have maintained a joint defense agreement in the TIG Insurance  
 11 Company v. Gary Smolker action in which both parties agreed to cooperate and not file cross-complaints  
 12 against each other.

13 On or about April 2, 2001, Debtor filed a Chapter 11 Bankruptcy Petition in this Court. As a  
 14 result, Moving Parties were forced to bring this proof of claim.

## 15 II.

### 16 CONCLUSION

17 Based upon the foregoing, Moving Parties, HOME SAVING TERMITE CONTROL, INC. and  
 18 WAYNE MORRIS, have a claim against Debtor in the form of a state court indemnity cross-complaint  
 19 against the Debtor.

20 DATED: April 21, 2001

PRINDLE, DECKER & AMARO LLP  
 GARY E. YARDUMIAN  
 BRADLEY L. TAYLOR

21 By: 

22 GARY E. YARDUMIAN  
 23 Attorneys for Cross-Defendants,  
 24 HOME SAVING TERMITE CONTROL, INC.,  
 25 W.F. MORRIS AND RIKK THOMPSON  
 26  
 27  
 28

**DECLARATION OF GARY E. YARDUMIAN**

I, Gary E. Yardumian, declare as follows:

1. I am an attorney, duly licensed to practice law in all the courts of the State of California, and am admitted to practice in the United States District Court, Central District of California. I am a partner with the law firm of Prindle, Decker & Amaro LLP, attorneys of record for Moving Parties, HOME SAVING TERMITE CONTROL, INC., and WAYNE MORRIS (hereinafter "Moving Parties"). I am the attorney primarily responsible for handling the state court action entitled TIG Insurance Company v. Gary Smolker, et al., Case No. BC 173952. As such, I am readily familiar with the facts of this case and have personal knowledge of the facts set forth in this declaration. If called upon as a witness, I could, and would, testify competently as follows:

2. I have retained the services of WILL REDFEARN of TYBOUT, REDFEARN & PELL, a member of the bar of this Court to represent HOME SAVING TERMITE CONTROL, INC., and WAYNE MORRIS at the hearing in this action, and assist my firm in obtaining admission pro hac vice. Enclosed herein under separate cover is a copy of Moving Parties Motion and Order for Admission Pro Hac Vice.

3. The aforementioned state court action arises out of a October 15 and 16, 1996 incident in which HOME SAVING TERMITE CONTROL, INC. (hereinafter "Home Saving") applied the product Syloid 244 to GARY SMOLKER and ALICE SMOLKER (hereinafter "the Smolkers") condominium unit for the purpose of eradicating termites. The Smolkers allege they have sustained personal injuries as a result of exposure to Syloid 244.

4. Syloid 244 was manufactured and distributed by Debtor, W.R. GRACE & COMPANY (hereinafter "Debtor").

5. On or about July 2, 1997, TIG Insurance Company filed a declaratory relief action against the Smolkers seeking a declaration that TIG Insurance Company is not required to pay for any insurance proceeds to the Smolkers. Thereafter, in October of 1997, the Smolkers filed a cross-complaint against HOME SAVING TERMITE CONTROL, INC., WAYNE MORRIS, W.R. GRACE & COMPANY, and numerous other parties alleging 31 causes of action, including but not limited to a strict products liability

1 cause of action against HOME SAVING TERMITE CONTROL, INC., WAYNE MORRIS and W.R.  
2 GRACE & COMPANY.

3 6. The gravamen of the Smolkers' cross-complaint is that Syloid 244 is a defective product  
4 and was negligently applied by Home Saving. The state court action was filed in the Los Angeles  
5 Superior Court Central District.

6 7. Shortly after the Smolkers filed their cross-complaint Moving Parties and Debtor entered  
7 into a joint defense agreement to defend against the Smolkers' claims. One of the provisions of the joint  
8 defense agreement provided neither Moving Parties nor Debtor would file a cross-complaint against each  
9 other. Further, the joint defense agreement provided each party would assist in defense costs, and  
10 provide cooperation and assistance in discovery and at trial.

11 8. On or about April 2, 2001, Debtor filed Chapter 11 petition for bankruptcy relief. Said  
12 bankruptcy petition, entitled In Re W.R. GRACE & COMPANY, bears the case number 01-01139, and  
13 is currently pending before this Court.

14 9. Moving Parties bring the instant Proof of Claim in order to preserve their rights to  
15 indemnity.

16 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
17 true and correct.

18 Executed on April 22, 2001, at Long Beach, California.

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GARY E. YARDUMIAN, Declarant



CERTIFICATE OF SERVICE

I, SHERRY RUGGIERO FALLON, certify that I am not less than 18 years of age; that service of the attached document was made on the individuals and/or entities below on the 6<sup>th</sup> day of August, 2001 by first class mail in accordance with BR 7004:

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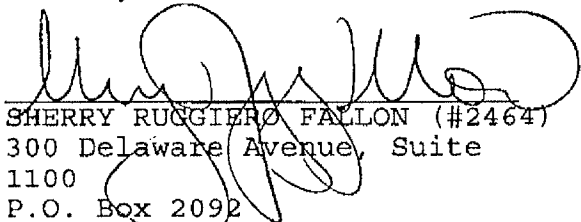
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